

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

WOLF CREEK NUCLEAR OPERATING CORPORATION  
Employer

and

Case 14-RC-168543

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,  
LOCAL 225  
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Supplemental Decision is denied as it raises no substantial issues warranting review.<sup>1</sup>

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<sup>1</sup> We agree with the Regional Director's decision not to give preclusive effect to a 2000 decision by a former Acting Regional Director that evaluated the managerial status of the Buyer employees at issue here. In doing so, we note that the Employer's progressive changes to its own operating procedures, including increasing the amount of single-source and preferred suppliers, has led to a reduction in competitive bidding and therefore in the discretion Buyers exercise in the procurement process. This "material[ly] differentiating fact" is more than sufficient to meet the Petitioner's burden and warrant relitigation. *Wolf Creek Nuclear Operating Corp.*, 365 NLRB No. 55, slip op. at 3 fn. 7 (2017). Chairman Miscimarra agrees with his colleagues that the Petitioner has proven changed circumstances sufficient to warrant revisiting the Buyers' managerial status. In doing so, Chairman Miscimarra does not rely, as the Regional Director did, on the changes to the Employer's requisition and procurement software, known as EMPAC. In his view, the revisions to EMPAC merely automated certain functions and reminded Buyers of preexisting boundaries on their discretionary authority without actually further diminishing that authority.

Although Member Pearce adheres to the views expressed in his dissent in *Wolf Creek Nuclear Operating Corp.*, Id. slip op. at 4-6, he agrees that the Employer's Request for Review of the Regional Director's Supplemental Decision fails to raise substantial issues warranting review.

In denying review, we do not rely on the Regional Director's citation to *Solartec, Inc.*, 352 NLRB 331 (2008), a two-member Board decision. See *New Process Steel, L. P. v. NLRB*, 560 U.S. 674 (2010). Additionally, we note that the Employer's reliance on *Concepts & Designs, Inc.*, 318 NLRB 948, 957 (1995), enfd. 101 F.3d 1243 (8th Cir. 1996), is misplaced. In that case, the Board did not pass on the issue of managerial status. The respondent prevailed on that issue before the judge, and the respondent was the only party that filed exceptions to the judge's decision.

PHILIP A. MISCIMARRA,	CHAIRMAN
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MARK GASTON PEARCE,	MEMBER
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LAUREN McFERRAN,	MEMBER
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Dated, Washington, D.C., October 27, 2017.